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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,090	12/29/2000	Richard W. Busser	4430-22	5019

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EXAMINER

MASKULINSKI, MICHAEL C

ART UNIT

PAPER NUMBER

2113

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/751,090	Applicant(s) BUSSER, RICHARD W.	
	Examiner Michael C Maskulinski	Art Unit 2113	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: The amendments require further consideration.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 20.

Claim(s) objected to: 15.

Claim(s) rejected: 1-14 and 16-19.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: see attached paper no. 2

**DIEU-MIN/LE
PRIMARY EXAMINER**

[Signature]

Grounds for Rejection

Claim Rejections - 35 USC § 112

1. Claims 1, 13, and 14 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for "substantially avoiding a reconstruction or restoration of data and/or parity stored on the two or more storage devices due to the failure" (see page 5 of Applicant's specification), does not reasonably provide enablement for "avoiding writing at least substantially all previously stored user data and/or parity to said at least two storage devices that was present before the failure" or "writing at least substantially all previously stored user data and/or parity that was previously written to said array of storage devices is avoided". The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use or make the invention commensurate in scope with these claims.

Claim Rejections - 35 USC § 103

2. Claims 1-8, 10-12, 14, 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Renner, Jr., U.S. Patent 6,243,827 B1, and further in view of Jeffries et al., U.S. Patent 5,974,544.
3. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Renner, Jr., U.S. Patent 6,243,827 B1 and Jeffries et al., U.S. Patent 5,974,544 as applied to claim 1 above, and further in view of Jones, U.S. Patent 5,479,653.

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4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Renner, Jr., U.S. Patent 6,243,827 B1 and Jeffries et al., U.S. Patent 5,974,544 as applied to claim 1 above, and further in view of Stephenson, U.S. Patent 6,353,895 B1.

Allowable Subject Matter

5. Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claim 20 is allowed.

7. It is suggested by the Examiner to rewrite the independent claims to incorporate the allowable subject matter indicated.